

**FILED**

**JAN 16 2003**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

SALMERON SALVATIERRA	)	No. 01-57009
SALVADOR	)	
	)	
Petitioner - Appellant,	)	D.C. CV-01-00787-JTM-(AJB)
	)	
v.	)	MEMORANDUM <sup>1</sup>
	)	
JOHN ASHCROFT, Atty General;	)	
ATTORNEY GENERAL OF THE	)	
STATE OF CALIFORNIA	)	
	)	
Respondents - Appellees.	)	
_____	)	

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, District Judge, Presiding

Submitted<sup>2</sup> September 13, 2002  
Pasadena, California

Before: SCHROEDER, Chief Judge, FLETCHER, Circuit Judge and

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<sup>1</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

<sup>2</sup> The Panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a) (2).

WEINER, District Judge<sup>3</sup>

Salmeron Salvatierra Salvador appeals the district court's denial of his 28 U.S.C. § 2241 habeas corpus petition, which challenged a removal order issued by the Bureau of Immigration Appeals. We affirm.

Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), precludes any discretionary waiver of deportation by the Attorney General for “an alien lawfully admitted for permanent residence if . . . since the date of such admission, the alien has been convicted of an aggravated felony.” Salvador’s argument that the Immigration Judge violated his due process rights by not advising him that he could apply for relief under § 212(h) has no merit. The record reflects that Salvador was convicted of three counts of child sexual abuse, an aggravated felony. See 8 U.S.C. § 1101(a)(43)(A) (defining “aggravated felony” to include “murder, rape, or sexual abuse of a minor.”). Since he was not eligible for a discretionary waiver, the Immigration Judge’s failure to advise him that he could apply for one was not a constitutional defect.

The holding of INS v. St. Cyr, 533 U.S. 289 (2001), is inapplicable to Salvador’s situation. In St. Cyr, the Supreme Court held that § 212(c) relief remained available

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<sup>3</sup> Honorable Charles R. Weiner, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

for aliens, like St. Cyr, whose convictions were obtained through plea agreements and who would have been eligible for § 212(c) relief at the time of their plea under the law then in effect. Salvador is not similarly situated to St. Cyr in particular since his convictions were obtained by a jury verdict, not a plea agreement. As such, “[t]he factors that militated in favor of St. Cyr – his ‘settled expectations’ based on ‘transactions or considerations already past’ – are not present [here].” Jimenez-Angeles v. Ashcroft, 291 F.3d 594, 602 (9<sup>th</sup> Cir. 2002). Unlike St. Cyr, who gave up valuable rights and preserved others when entering into a plea agreement with the government, Salvador’s convictions imposed upon him all the legal liabilities stemming from those convictions. Accordingly, there is no compelling factor preventing the retroactive application of the IIRIRA rules foreclosing the Attorney General’s discretion to waive his deportation.

Finally, Salvador’s equal protection argument is foreclosed by our holding in Taniguchi v. Schultz, 303 F.3d 950, 957-58 (9<sup>th</sup> Cir. 2002) (rational basis exists for denying the § 212(h) waiver to aggravated felon lawful permanent residents but not to other aliens).

AFFIRMED.